

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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HAIN CAPITAL HOLDINGS LTD.	:	
	:	
Plaintiff,	:	
	:	Civil Action No. 08 CV 3156 (BSJ)
- against -	:	
	:	
FIBERLIGHT, LLC and KEVIN B. COYNE,	:	
	:	
Defendants.	:	
	:	
	:	
	:	
_____	X	

PLAINTIFF’S OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS

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I. Defendants Motion to Dismiss is Rendered Moot as a Result of Plaintiff's Filing of An Amended Complaint

On May 1, 2008, Defendants' filed a partial motion to dismiss the Complaint. Concurrently, with the filing of this Opposition Memorandum, Plaintiff is filing an Amended Complaint which renders the motion to dismiss moot. The Amended Complaint addresses the specific concerns raised in the Defendants' Motion to Dismiss

With respect to Defendants' first argument, plaintiff has amended the complaint to clarify that the breach of contract claim is only applicable to defendant Fiberlight, LLC and not defendant Kevin B. Coyne. With respect to Defendants' second argument, the complaint has been amended to add more specific facts regarding the fraud claim. With respect to Defendants' third argument, Plaintiffs have clarified the fraud claim to indicate that the fraud involves statements that are separate and apart from representations made in the contract. See, Coopervision, Inc. v. Intek Integration Technologies, Inc., 7 Misc.3d 592, 604, 794 N.Y.S.2d 812, 822 (2005); Zuccarini v. Ziff-Davis Media, Inc., 306 A.D.2d 404,405, 762 N.Y.S.2d 621 (2d. Dept. 2003) ("allegations of fraud are sufficiently collateral to the alleged agreement to support a claim of fraud in the inducement").

For these reasons, defendants' motion to dismiss must be denied as moot.

Dated: May 15, 2008

By: /s/ Lawrence C. Hersh
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